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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,938	10/07/2003	Kim J. Dato	JDATO.001DV1	6022
7590 02/24/2006			EXAMINER	
Robert F. Gazdzinski, Esq. Gazdzinski & Associates Suite 375 11440 West Bernardo Court San Diego, CA 92127			HAUGLAND, SCOTT J	
			ART UNIT	PAPER NUMBER
			3654	
DATE MAILED: 02/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,938

Applicant(s)

DATO ET AL.

Examiner

Scott Haugland

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28,29,31,33-36,39-54 and 58-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28,29,31,33-36,39-54 and 58-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 36 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The originally filed application does not disclose an offset of the rows of spools permitting the depth of the housing to be less than the sum of the diameter of two of the spools as required by claim 36.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 40, lines 5-6, "said at least portion" lacks antecedent basis. The language "at least portion" does not appear previously and the language "at least a portion" appears twice referring to two different sets of ribbon portions.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40-42, 51-54, 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Cayer (U.S. Patent No. 4,369,929).

Cayer discloses a dispenser for spooled materials comprising a housing element 20, 50 having a recess formed therein, a plurality of spools of material 12-15 disposed substantially within the recess, and a plurality of apertures 30-33 disposed in proximity to the spools through which the materials are dispensed. Cayer discloses forming the dispenser of plastic (col. 3, lines 21-23) which implies a polymeric material.

With regard to claims 40-42, the apparatus disclosed by Cayer is equivalent to that formed by the claimed process. E.g., the structure disclosed by Cayer is the same as one produced by winding (and, thus curling) material onto a first spool having a radius substantially identical to a second spool that is one of the spools disclosed by Cayer, unwinding the material from the first spool, and winding it onto the second spool.

The method steps recited do not distinguish the resulting product from that disclosed by Cayer.

With regard to claim 51, the handle 45 does not retain cap element 50 on the housing, but only aligns it as evidenced by the fact that the cap may be removed by lifting the cap upwards. The cap is not retained by any structure projecting out of the recess.

With regard to claim 54, the spindles 26, 52 of Cayer are seen to be formed as part of the recess to the same extent as those of the application since they extend into the recess.

With regard to claim 59, the housing elements maintain the spools in alignment without the use of the partitions 40-43. Note the space between the rolls of material and the partitions in Figs. 1, 2, and 4. Alignment is maintained by spindles 26, 52.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Brown (U.S. Patent No. 987,952).

Cayer is described above.

Cayer does not disclose that the housing has a depth that is less than both a width and a length of the housing, that the length, width, and depth of the dispenser are unequal, and that the distal portions of the ends of the spools do not have ribbon wound on them.

Brown teaches forming a spool for web material with distal ends (see Fig. 2) that do not have material wound on them.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the housing of Cayer so that its depth is less than its width and length or so that the length, width, and depth are unequal since the precise shape of the housing is clearly not critical to the operation of the dispenser (as evidenced by the substantial difference in shape of the disclosed embodiments). It would have been obvious to make such changes at least for aesthetic reasons.

It would have been further obvious to provide the spools of Cayer with distal ends that do not have material wound on them as taught by Brown to facilitate retaining of material on the spools without interference with sides of the housing that encloses the spools.

Claims 29, 31, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Brown as applied to claim 28 above, and further in view of Goldstein (U.S. Patent No. 5,407,417).

Cayer does not disclose quantities of curled ribbon disposed on the spools in a helical lay pattern.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

With regard to claim 33, it would have been obvious to fully utilize the spools when providing spools of helically wound ribbon to avoid waste of space and materials (e.g., spool and packaging material) in accordance with the teachings of Cayer and Goldstein. The ribbon of the resulting dispenser would traverse substantially all of the length of the apertures during unwinding.

Claims 43-49, 60, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Goldstein (U.S. Patent No. 5,407,417).

Cayer is described above.

Cayer does not disclose quantities of curled ribbon disposed on the spools in a helical lay pattern.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon

disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

With regard to claim 47, it would have been obvious to fully utilize the spools when providing spools of helically wound ribbon to avoid waste of space and materials (e.g., spool and packaging material) in accordance with the teachings of Cayer and Goldstein. The ribbon of the resulting dispenser would traverse substantially all of the length of the apertures during unwinding.

With regard to claim 44, it would have been obvious to use the modified device of Cayer to store ribbons that differ in at least one attribute since Cayer teaches storing a variety of materials and it is common to require a supply of different ribbons.

With regard to claims 44, 45, 60, and 61, the spools necessarily have a radius similar to the curl radius of the ribbon since the ribbon has a curl resulting from being wound on the spools.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer (U.S. Patent No. 4,369,929) in view of Goldstein (U.S. Patent No. 5,407,417) and Schwartz (U.S. Patent No. 3,948,455).

Cayer is described above.

Cayer does not disclose ribbon wound onto said spools in a substantially helical pattern or that one of the housing elements has at least a portion that is substantially transparent.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

Schwartz teaches providing a dispenser for wound ribbon with a transparent portion to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

It would have been further obvious to make a portion of the dispenser transparent as taught by Schwartz to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

The structure of the spools of curled ribbon of the modified apparatus of Cayer is the same as the spools of ribbon formed by winding ribbon onto the spools after a portion of the ribbon has been curled.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Goldstein as applied to claim 45 above, and further in view of Brown.

Cayer does not disclose that the distal portions of the ends of the spools do not have ribbon wound on them.

Brown teaches forming a spool for web material with distal ends (see Fig. 2) that do not have material wound on them.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the spools of Cayer with distal ends that do not have material wound on them as taught by Brown to facilitate retaining of material on the spools without interference with sides of the housing that encloses the spools.

Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Schwartz.

Cayer is described above.

Cayer does not disclose that the dispenser is made of a transparent material.

Schwartz teaches providing a dispenser for wound ribbon with a transparent portion to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have obvious to one having ordinary skill in the art at the time the invention was made to make the dispenser transparent as taught by Schwartz to enable a user to view the ribbon in the dispenser and determine the quantities remaining. The modified dispenser of Cayer is capable of use for dispensing pre-curved ribbon which maintains at least some of said pre-curl after being dispensed. In addition, the materials disclosed for dispensing by Cayer inherently retain curl after being dispensed.

Note that there is no need in the device of Cayer for any curling apparatus.

Response to Arguments

Applicants' arguments filed 12/5/05 have been fully considered but they are not persuasive.

Applicants argue that claim 36 is supported by the specification and Fig. 9 as filed. However, Fig. 9 shows spools arranged such that the axes of a pair of spools, such as the two uppermost spools in Fig. 9, lie in a plane parallel to the upper side (appearing to be designated 902d) of the container 902. This would not allow the depth of the container (i.e., the internal dimension of side 902d measured in a direction perpendicular to faces 902a, 902f) to be less than the sum of the diameters of two spools (i.e., twice the diameter of one of spools) even if there were no ribbon wrapped on the spools. With ribbon on the spools, the minimum depth would be larger. The specification is consistent with what is shown in Fig. 9.

Applicants argue that the article claimed in claims 40 and 59 is not the same as disclosed by Cayer and that Cayer does not disclose a ribbon. However, the web materials disclosed by Cayer can be considered ribbons. A ribbon is a web. No characteristics of the ribbon are claimed that would distinguish over the web materials of Cayer. The materials disclosed by Cayer are curled at least when wound.

Applicants argue that Cayer does not disclose or suggest "disposing at least a portion of said ribbon on a substantially elongate spool after said at least portion has been curled". However, claim 40 is a product-by-process claim. It is directed to a product, which product is disclosed by Cayer. The claimed product includes a spool on which curled ribbon is wound. Cayer discloses a ribbon wound on a spool. Materials

Art Unit: 3654

disclosed by Cayer are curled at least during winding onto the spools and inherently retain curl when unwound from the spools. Whether or not curl is retained after unwinding, it is clear that the dispenser of Cayer is the same as that claimed since it is the same as one produced by winding material onto a first spool (thereby curling the material), then rewinding it onto a second identical spool and placing the second spool of material in the dispenser. The claims do not exclude a dispenser including a ribbon that has been curled (e.g., wound with or without permanent retention of curl), uncurled, and curled again before being placed in the dispenser since the claims are directed to a product, not a process of making it. The claims do not require a ribbon that has a curl after being dispensed (this is inherent in spools of material disclosed by Cayer, anyway). The article recited in claim 51 is not distinguished over the dispenser of Cayer for similar reasons since the claimed process steps performed in making the article do not result in an article different from that disclosed by Cayer.

Applicants argue, with regard to claim 59, that disposing ribbon on a spool cannot be considered "pre-curling" ribbon. However, "pre-curled" can refer to curling before use, but claim 59 now recites that the ribbon was curled by a curling mechanism before being placed on spools. In either case, the ribbon disclosed by Cayer is not different from the claimed ribbon whether it was curled before being placed on the spool that is located in the dispenser or as it is placed on that spool. This claim is directed to an article and the comments above relating to claims 40 and 51 apply to it, also.

Applicants' arguments for the patentability of claims 39, 44, 45, and 58 are related the process of forming the spools of curled ribbon and are addressed above.

With regard to Applicants' arguments concerning claims 60 and 61, it is noted that the materials (e.g., waxed paper, aluminum foil) disclosed by Cayer do retain curl having substantially the same radius of the spools on which they are unwound or placed in a relaxed state.

The declarations under 37 CFR 1.132 filed 12/5/05 are insufficient to overcome the rejection of claims as set forth in the last Office action because: The significance of the sales figures presented is not clear since there is no basis for comparison given. E.g., typical sales of prior art ribbon products have not been presented. In addition, it is not clear from the declarations that any commercial success is due to the features of Applicants' claimed invention and not to advertising and promotional efforts. A nexus must be established between the invention as claimed and any commercial success.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3654

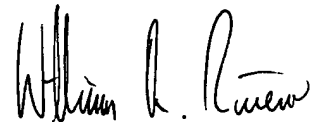
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Haugland whose telephone number is (571) 272-6945. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


sjh
2/16/06



**WILLIAM A. RIVERA
PRIMARY EXAMINER**